IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

CRP.No. 2020 of 2003()

AGAINST THE ORDER IN IA 1521/03 IN
OS.337/1996 of MUNSIFF COURT,VARKALA

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REVN. PETITIONER: RESPONDENTS/DEFENDANT 1 & 2 IN O.S.

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1. CHANDRAN S/O. KESAVAN, PANTHUVILA VEEDU,
   CHERINNIYOOR P.O., VARKALA VIA.

2. SUNDARAN S/O. KESAVAN, PANTHUVILA VEEDU,
   CHERINNIYOOR P.O., VARKALA VIA.

BY ADV. SRI.R.ANILKUMAR

RESPONDENTS: PETITIOENR IN IA/PLAINTIFF IN OS./RESPONDENTS/RESP

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1. SUSEELA D/O. RAGHAVAN, PANTHUVILA VEEDU,
   AYANTHOL, VARKALA, CHERINNIYOOR VILLAGE.

2. SHEEJA D/O. NATARAJAN, P.B.NO.21,
   ABUDHABI, UAE.

3. SHEEBA D/O. NATARAJAN, P.B.NO.3671,
   DUBAI, UAE.

BY ADV. SRI.C.R.SIVAKUMAR
SRI.C.R.SIVAKUMAR
SMT.G.VIDYA
SRI.M.A.MUNEER
SRI.SANTHOSH PETER (MAMALAYIL)

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO. 2375/03 IN CRP 2020/03

DISMISSED

15/12/2006

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

C.R.P .NO.2020 OF 2003

Dated 15th December 2006

O R D E R

Defendants 1 and 2 in O.S.337/96 on the file of Munsiff court, Varkala are petitioners. Respondents are plaintiffs. As per decree and judgment dated 19/12/2002 preliminary decree for partition of plaint A to C schedule properties was passed. Petitioners filed A.S.122/03 before Sub court, Attingal and it is pending. Meanwhile plaintiffs filed I.A.1521/03 an application under Section 151 of Code of Civil Procedure to amend the preliminary decree contending that a clerical error has crept in the decree. As per order dated 14/7/2003, learned Munsiff allowed that application and amended the decree as follows;

> "Suit is decreed allowing plaintiffs and defendants 3 to 4 to get metes and bounds partition of their 28/84 share over plaint A and C and 56/84 share over plaint B schedule.

The order dated 14/7/2003 is challenged in this revision petition filed under Section 115 of the Code of Civil Procedure.

2. Learned counsel appearing for petitioners and respondents were heard.

3. As rightly pointed out by learned counsel appearing for petitioners issue No.9 relates to the availability of plaint schedule properties for partition and share of plaintiffs and defendants. In paragraph 34 of the judgment learned Munsiff found that plaint A to C schedule properties are available for partition and they are to be divided. Judgement reads;

> "Thus it is seen that share of plaintiffs are 26/84 in plaint A to C schedule properties."

No amendment was sought or made in respect of the said finding in issue No.9 at para 34 of the judgment. Therefore as per the finding in paragraph 34 of the judgment plaint A to C schedule properties are to be divided into 84 shares and plaintiffs are entitled to 26/84 shares. Decree was also in

conformity with that finding. But under the impugned order it was amended providing that plaintiffs and defendants 3 and 4 together are entitled to get 28/84 shares over plaint A and C schedule properties and 56/84 shares over plaint B schedule property. It is not in conformity with the findings on issue No.9. In such circumstance, impugned order as against the finding in the judgment is unsustainable. Whatever it be, question of correct shares are to be decided by learned Sub Judge in A.S.122/03 when the decree and judgment is challenged and it is not necessary to go into that question in this application. Revision is allowed. Impugned order dated 14/7/03 is set aside. I.A.1521/03 stands dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.